S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 24, 2009

Opinion No. 09-130

Limitation of Wholesale Licenses by Ordinance

QUESTIONS

May a municipality or county limit by ordinance the number of liquor wholesaler licenses issued within its jurisdiction?

OPINIONS

No. The Alcoholic Beverage Commission is vested with the sole authority to issue liquor wholesaler licenses pursuant to Tenn. Code Ann. § 57-3-203, and the legislature has not delegated the authority to municipalities or counties to limit the number of wholesaler licenses issued.

ANALYSIS

The 21st Amendment to the U.S. Constitution returned the power to the states to regulate the importation, transportation and possession of intoxicating liquors within their respective borders. U.S. Const. amend. XXI, §2. The legislature has the power to regulate intoxicating liquors and may delegate these powers. *McCannless v. Klein*, 188 S.W.2d 745 (Tenn. 1945). The legislature created the Alcoholic Beverage Commission in 1963 and has delegated the power to regulate intoxicating liquors in this state to the Commission. Tenn. Code Ann. §§ 57-1-102 and 57-1-201 *et. seq.* Additionally, the legislature has delegated to the Commission the sole authority to issue licenses to engage in the sale of intoxicating liquors.[1] Tenn. Code Ann. § 57-3-104(c)(1). *See also City of Chattanooga v. Tennessee Alcoholic Beverage Comm'n*, 525 S.W.2d 470 (Tenn. 1975).

The legislature has also delegated certain other powers to municipalities with regard to intoxicating liquors. For example, municipalities are charged with issuing certificates of good moral character as a condition precedent to obtaining a retail license. Tenn. Code Ann. § 57-3-208. Also, the legislature has given municipalities the express authority to limit the location of

[1] There are four types of licenses that the Commission may issue: a manufacturer's license pursuant to Tenn. Code Ann. §§ 57-2-102 and 57-3-202, a wholesaler's license pursuant to Tenn. Code Ann. §57-3-203, a retailer's license pursuant to Tenn. Code Ann. § 57-3-204, and a winery license pursuant to Tenn. Code Ann. § 57-57-3-207.

retail liquor stores and the number of retail licenses that may be issued within a municipality's jurisdiction. Tenn. Code Ann. § 57-3-208(c).[2]

You have asked whether municipalities may limit the number of liquor wholesaler licenses issued in its jurisdiction. It is the law in this state that municipalities may exercise only those powers expressly or by necessary implication delegated to them by the legislature in their charters or under statutes. *City of Lebanon v. Baird* 756 S.W.2d 236 (Tenn. 1988). The statutes governing the issuance of wholesaler licenses do not expressly delegate such authority to the municipalities.

In determining whether or not the legislature intended to empower municipalities to limit the number of wholesaler licenses, we can presume that the legislature is knowledgeable about its prior enactments. *Hicks v. State,* 945 S.W. 2d 706 (Tenn. 1997). We are also to construe "in pari materia" those statutes relating to the same subject or having a common purpose. *State v. Collins,* 166 S.W.3d 721(Tenn. 2005). "And, 'where the legislature includes a particular language in one section of the statute but omits it in another section of the same act, it is presumed that the legislature acted purposefully in including or excluding that particular subject.'" *State v. Edmonson*, 231 S.W.3d 925 (Tenn. 2007) (quoting *Bryant v. Genco Stamping & Mfg. Co.,* 33 S.W.3d 761 (Tenn. 2000)).

Since the legislature gave express authority to municipalities to limit the number of retail licenses within their jurisdictions, but did not give any such authority with respect to the issuance of wholesale licenses, we must presume that the legislature intentionally left that authority to the alcoholic beverage commission. Therefore, it is the opinion of this office that municipalities may not limit the number wholesaler licenses issued within its jurisdiction.[3]

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

[2] Primary control over the retail sale or consumption of beer has generally been vested in units of local government. *Claiborne Country Club, Inc., v. City of Tazewell*, 872 S.W.2d 685 (Tenn. Ct. App. 1993). Tenn. Code Ann. § 57-5-103 gives the power to local governments to issue and revoke permits to sell beer. *See also Fentress County Beer Bd. v. Cravens*, 356 S.W.2d 260 (1962).

[3] If there is a conflict between municipal and state regulations, state regulation will prevail, since the final authority to license the sale of intoxicating liquor lies with the commission. *State ex rel. Brown v. McCanless*, 195 S.W. 2d 619 (Tenn. 1946).

LYNDSAY FULLER SANDERS
Assistant Attorney General

Requested by:

Honorable Jamie Woodson
Speaker Pro Tempore
6 Legislative Plaza
Nashville 37243